CASE NO. 08cv 1589

ATTACHMENT NO. 5

EXHIBIT _____

TAB (DESCRIPTION) _____

rule out every possibility of his innocence in this case. I would submit to the Court, though, Judge, we just about have. I submit to the Court when he gives a statement freely and voluntarily without any coercion whatsoever as the evidence has shown saying, "Yeah, I was the guy in the garage. She was in the same position as when I saw her, and I put those garbage cans over her."

I submit to the Court, your Honor, that the evidence just shouts out, your Honor, if you apply the common sense standard to this case concerning all the evidence, Judge, taken together, that no one else, Judge, but the defendant committed this offense, your Honor. Thank you, Judge.

MR. PLACEK: Your Honor, specifically we would like to introduce into evidence dealing with our motion, especially dealing with the ethical violation approximately five reports dating from the 1st of August to approximately the 7th of August dealing, in fact --

THE COURT: Why don't I suggest to you, Miss Placek, that you incorporate those documents as exhibits in your Motion for a New trial, if a

Motion for a New Trial becomes necessary and appropriate in this case.

MS. PLACEK: Fine, Judge.

THE COURT: This defendant is charged in an 18-count indictment with miscellaneous counts of murder, miscellaneous counts of aggravated criminal sexual assault, criminal sexual assault, concealment of a homicidal death, kidnapping, aggravated kidnapping, and unlawful restraint. The Court has heretofore sustained the Defendant's Motion for Acquittal as to several of these 18 counts, Counts 5 and 6 specifically as I recall, which leaves the Court with a 16-count indictment to consider, and I would like to consider the arguments of counsel, my notes, which were made during the trial, the indictment, and other relevant factors overnight before rendering the Court's decision, to make certain that I have the facts straight in my mind as I perceive them at this point.

Ms. Placek, are you available tomorrow?

MS. PLACEK: No, Judge, unfortunately I'm not. I'm available Friday -- No, Judge, I'm sorry, I got

a motion tomorrow I was supposed to do today, but I put it over in regards of being here. I do apologize to the Court, Judge. I could be here midmorning on Tuesday. I could be here Friday if the Court wishes.

MR. MURPHY: Judge, Friday is a problem for me. I'm going to be off Friday.

THE COURT: Do you anticipate us being in session until 5:00 o'clock?

MR. MURPHY: Today?

THE COURT: Yes.

MR. MURPHY: Yes, Judge, although two of the cases we have this afternoon are not necessarily pressing cases.

THE COURT: Well, I want to hear the evidence in Mr. Emanuel's (Phonetic) case. That's terribly frustrating not to reach that case and take some evidence.

MS. PLACEK: I could do it Monday in the afternoon, Judge at 1:30.

THE COURT: Well, my present thought is if we only have approximately an hour of testimony with Mr. Emanuel's case, then I could review my notes and render a decision today, and put any other

matters on the call today, we could put that over until a later date.

On the other hand, if we do not complete Mr. Emanuel's evidence hearing no later than 4:15, it will become very doubtful whether we could do this today, that would not give me enough time to review my notes and render the decision.

In any event, let's pass this case.

MS. PLACEK: If the Court wants, if I could come in at 1:30 tomorrow, if I could have time certain.

THE COURT: What do we have on the call?

Let's try at 1:00 tomorrow.

MS. PLACEK: I'll do my best.

THE COURT: You'll be here sometime tomorrow afternoon?

MS. PLACEK: Yes, Judge, I will.

THE COURT: Order of Court, as to Mr. Hendricks, May 30, 1:00 p.m.

MS. PLACEK: If the Court wishes, we have transcripts, also. Does the Court wish those?

THE COURT: No, I don't think I will need transcripts. I just want to go over my notes and refresh my recollection. Thank you just the same,

though. See you tomorrow.

(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS )
) SS.
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS )
V ) No. 88 CR 12517
JEROME HENDRICKS )

REPORT OF PROCEEDINGS had in the above entitled cause, before the Honorable LEO E. HOLT, Judge of said court, on the 30th day of May, A.D., 1991.

APPEARANCES:

HON. JACK O'MALLEY,
State's Attorney of Cook County, by
MR. JOHN MURPHY and
MR. SCOTT CASSIDY,
Assistant State's Attorneys,
appeared for The People;

MR. RANDOLPH STONE,
Public Defender of Cook County, by
MS. MARIJANE PLACEK,
Assistant Public Defender,
appeared for The Defendant.



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THE CLERK: Jerome Hendricks, in custody. Sheet 9, Line 1.

(Defendant Present)

THE COURT: All right. Miss Placek, are you expecting Mr. Lufrano to join you?

MS. PLACEK: Pardon, sir?

THE COURT: Are you expecting Mr. Lufrano to join you?

MS. PLACEK: I called for him, but if the Court wishes to move ahead, I understand the Court has a trial. I'm sure Mr. Lufrano wouldn't be hurt if the Court proceeds.

THE COURT: When did you call him?

MS. PLACEK: I called him when I entered the courthouse.

THE COURT: How long ago was that?

MS. PLACEK: About ten minutes ago, Judge. They were going to page him at the office.

THE CLERK: I'll call him, Judge.

THE COURT: Before we proceed any further, I wish to advise Mr. Hendricks of some rights that he has.

Mr. Hendricks, you have a constitutional right to testify in this case on your own behalf. The

right that you have is personal to you and it can be waived by you. That is to say, you do not have to testify in this case if you choose not to.

But the right to testify is yours and yours alone. It does not belong to your attorney or anyone else, and your attorney cannot waive your right for you.

In making the decision as to whether or not to testify in this case, you clearly have a right to confer with your attorney, and you should confer with your attorney in that regard. You should also give consideration to the advice that is given to you by your attorney regarding whether you should testify or not, but in the final analysis, the decision as to whether to testify belongs to you and only to you.

If you have not had a sufficient amount of time to discuss the matter with your attorney, and you desire to continue to discuss that with your attorney, I will pass your case and allow you an opportunity to further confer with your attorney in regard to whether you should testify in this case.

On the other hand, if you are satisfied

that you and your counsel have discussed it and you understand your right, you understand that you and you alone can waive your right and you are prepared to do that, I will hear from you and I will do whatever you desire me to do.

MS. PLACEK: Judge, the defendant asks that his case be passed. He wishes to say something to me.

THE COURT: Pass.

MS. PLACEK: Thank you.

(Whereupon a recess was taken in the above entitled cause, after which the following proceedings were had:)

THE CLERK: Jerome Hendricks.

THE COURT: All right.

Mr. Hendricks, have you had sufficient time to confer with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: What is it that you desire to do, Mr. Hendricks?

THE DEFENDANT: Waive my right, sir.

THE COURT: All right. The defense has heretofore rested, and that will stand.

Mr. Hendricks is charged in a--

MR. CASSIDY: Excuse me, Your Honor. May I address the court a moment?

THE COURT: Yes.

MR. CASSIDY: Yesterday, Your Honor, I made a statement about what is not contained in the evidence and what is contained in the police reports. I'd like to apologize to the Court and I ask that be stricken.

It was a comment about what type of person Denise Johnson was, and I believe I was at fault. The only evidence the Court should consider is the evidence from the witness stand, and I was not-- I was improper in saying that. I just ask that be stricken, what I said, Judge, and I apologize to Your Honor for saying that.

THE COURT: Yeah, I'm aware of the-- Of the division of what was before me on the trial and what was before me on the hearing to determine whether or not the defendant could reach the level of Chambers versus Mississippi situation, and I have those differences pretty well categorized in my mind.

There is a possibility there's been some overlapping in my mind, but I don't think so.

MR. CASSIDY: I apologize anyway, Your Honor. Thank you.

THE COURT: This defendant is charged in a multi-count indictment charging the offenses of first degree murder, aggravated criminal sexual assault, concealment of a homocidal death, criminal sexual assault, kidnapping, aggravated kidnapping, and unlawful restraint. He is presumed to be innocent of the charges placed against him, and the State bears the burden of proving his guilt beyond a reasonable doubt.

Because he is presumed to be innocent of the charges placed against him, the defendant is entitled to have the inferences that are drawn from the evidence tobe drawn in his favor so long as one can do so without doing violence to logic and common sense.

Now, the State in its argument acknowledged, as is apparent, that most of the evidence in this case is circumstantial. At the conclusion of the State's case we had an occasion to discuss the question of the corpus delecti and utilization of the defendant's statement in stabbing the corpus delecti and what usage could be made of

the defendant's statement at that stage of the trial and at this stage of the trial.

The Court clearly determined from the evidence adduced at the close of the State's case that the corpus delecti of the offense of first degree murder was completely established outside of the confession of the defendant. Thus, there was no need to discuss whether or not the defendant's statement-- And I call it a statement as distinguished from a confession, because one thing is at least clear, if nothing else, is that this statement does not confess the offense of first degree murder.

What it confesses is the offense of aggravated criminal sexual assault and aggravated kidnapping, or the lesser offenses of criminal sexual assault or kidnapping, and need not necessarily be discussed at this point.

Suffice it to say that if it does not confess those crimes, it comes very, very close to it. The distinction of a confession and a statement of the defendant being that a confession must contain all of the essential elements of the offense so that it leaves nothing to be supplied by extrinsic

evidence. Whether that is the case here or not as far as the two offenses of aggravated criminal sexual assault and kidnapping, or aggravated kidnapping, and their lesser includeds, we will cross that bridge when we get to it.

The evidence which supports the offense of first degree murder is circumstantial, and the evidence which supports most of the counts, or of aggravated criminal sexual assault, is also circumstantial.

The evidence which would support the concealment of a homocidal death is circumstantial, ans so I suppose the first place to start in analyzing this evidence is what is the consequences of the circumstantial evidence.

Circumstantial evidence, of course, is evidence just like any other evidence, with perhaps the single caveat that a defendant ought not be convicted on circumstantial evidence alone unless the evidence is sufficient to remove all reasonable doubt of guilt. Now, that is not a new concept of any kind. If you think of circumstantial evidence of simply being evidence, then, of course, no defendant should be convicted of

criminal offenses unless the evidence is sufficient to remove a reasonable doubt, or all reasonable doubt.

The evidence in this case demonstrates that on August 1st, 1988, that this defendant and the decedent in this case met in the late evening hours, and according to the statement of the defendant,engaged in an act of sexual intercourse at the insistence and request of the victim.

That shortly thereafter the two of them,again at the request of the victim, went into an abandoned garage and again engaged in an act of sexual intercourse, accompanied with some degree of deviation, kinkiness, or whatever one might want to describe it as, according to the defendant.

That after completing that act of sexual intercourse the defendant left the premises, leaving the young girl there alive and well. Some three or four days later the defendant says that he went into that same garage and the victim was in the same position as he had last seen her, except that she was now dead.

There is also evidence that the victim was not seen alive after August 1st, 1988. Now, I am

fully aware that there is some contention that the victim was, in fact, seen alive. That contention does not arise during the course of the trial of this case and is not evidence in this case. It comes about and comes to the attention of the Court as a result of a hearing held to determine whether or not the source of that information had such a degree of reliability as to overcome the hearsay nature of it and permit its introduction into evidence, and after a hearing the Court concluded that it did not. So the evidence in this case establishes that the defendant is the last person to have seen her alive.

The State argues that the Court cannot take at face value all of the assertions made by the defendant in his statement to the police officers, and the Assistant State's Attorney. They theorize that the defendant is admitting that which he must admit and is avoiding implicating himself in the more serious offenses with which he is charged.

And as I understand the argument, it runs something like this; that because I do not have to and cannot logically believe, because of

the nature of the victim by virtue of age and other factors, the motivation of the defendant's statement, that because I can't believe that he told the truth, the whole truth, and nothing but the truth, I can, therefore, disregard those statements or the lack of statements implicating him in the more serious offense, and conclude that the opposite; that is, since he lied, the opposite is true. And I reject that as being a proper analysis.

If I conclude that this defendant has not told the truth, then clearly I can disregard his statements, but in disregarding his statements does not mean that there is any evidence to support the contrary.

More specifically, there is no evidence at all in this statement to support any forceful sexual contact with this young girl. The defendant's statement negates totally any force to accomplish any sexual act. His statement essentially is one in which he and the young girl engage in consentual sex, and if I choose not to believe that, that does not lead me to the other conclusion that the sex was, therefore, forceful, and certainly doesn't

lead to that result beyond a reasonable doubt when there is no evidence other than what he says.

Now, the fact that this young girl died in a clearly violent manner with a ligature, or two ligatures around her throat, one of which the defendant says she placed there, or he placed there in order to engage in the fantasy of riding her like a horse, does not lead to the conclusion that this was forceful sexual contact, and since there is no evidence that the defendant committed any acts of force against the young girl in order to engage in acts of sexual intercourse, the defendant is found not guilty of the offense of aggravated criminal sexual assault as charged in Count 6 of this indictment and as charged in Count 7 of this indictment, and as charged in Count 9 of this indictment.

Counts 5 and 8, which charge the defendant with aggravated criminal sexual assault have already been dismissed against the defendant at the close of the State's case.

Now, Count 10 of the indictment charges the defendant with the offense of aggravated criminal

sexual assault, in that he, being over the age of seventeen, committed an act of sexual penetration with the deceased in this case, who was then under the age of thirteen.

The defendant's statement, coupled with the other evidence in this case which establishes the age of the victim, establishes this count of the indictment beyond a reasonable doubt, and the defendant is found guilty of the offense of aggravated criminal sexual assault as charged in Count 13 of this indictment. I mean Count-- As charged in Count 10 of this indictment.

Count 11 of the indictment charges the defendant with the offense of criminal sexual assault by the use of force and by threat of force, and because there is no evidence that the defendant exerted any force or threat of force against the victim, the deceased, to accomplish that result, he is found not guilty of the offense of criminal sexual assault as charged in Count 11 of the indictment.

In Count 13 the defendant is charged with the offense of kidnapping in that he knowingly secreted and confined Denise Johnson against her

will. While there is no direct evidence that taking Denise into that abandoned garage was against her will, and while the reasonable inferences to be drawn from the defendant's statement is that it was not against her will, nonetheless, the provisions of Section 10-1-A(1) are met when we consider Sub-Paragraph B of the kidnapping statute, and Sub-Paragraph B of the kidnapping statute provides that confinement of a child under the age of thirteen is against his will within the meaning of this statute if such confinement is without the consent of his parents or legal guardian.

Accordingly, the evidence in this case supports Count 13 of this indictment, and the defendant is found guilty of the offense of kidnapping.

The defendant is also charged with multi-counts of aggravated kidnapping, and in Count 14 he is charged with the offense of aggravated kidnapping by knowingly and secretly confining Denise Johnson, a child under the age of thirteen, against her will.

Again looking at Section 10-1A, the

definition of kidnapping, and Sub-Paragraph 2 of Section 10-2, the aggravated kidnapping statute which simply makes it an aggravated kidnapping if the victim is under the age of thirteen, the evidence in this case supports the proposition that the defendant is guilty of the offense of aggravated kidnapping as charged in Count 14 of this indictment.

Because I have determined that the defendant is guilty of the offense of aggravated kidnapping as charged in Count 14, it also follows and will be further elaborated upon, that the defendant is guilty of the offense of aggravated kidnapping as charged in Count 15, and in Count 16, and in Count 17.

In Count 18 the defendant is charged with the offense of unlawful restraint, which is a lesser included offense of kidnapping, and he is also found guilty of that offense.

Now, I have, therefore, discussed all of the offenses with the exception of the first degree murder counts. The evidence which supports the first degree murder count, as I indicated, is circumstantial, but the circumstances in this case

are compelling.

The statement of the defendant, the circumstances under which she's last seen alive, the circumstances under which she is found, the condition of the body at the time that she is found, the acknowledgment by the defendant in his statement of the condition of the body, the location of the body, the position of the body at the time that he last saw her, all tend to strongly suggest and prove beyond a reasonable doubt, removing all reasonable inferences of innocence, that the defendant committed the offense of first degree murder.

The difference in this case, and what makes it impossible for the Court to find him guilty of the offensee of aggravated criminal sexual assault predicated on force is that I can't tell whether the force was used in connection with the sex act or as an afterthought to murder the victim because of the sex act.

By that I simply mean this. This defendant could just as easily have committed the offense of murder in order to cover up the offense of aggravated criminal sexual assault by-- That is

with a child, he being over the age of seventeen and she being under the age of thirteen, but whatever the motivation, it does not preclude a finding that this defendant murdered the deceased on or about August 1st or the early morning hours of August 2nd.

The defendant argues that because of the failure of the pathologist to delineate the time of death, that that, in and of itself, raises a reasonable doubt. And the fact that the pathologist could not determine whether or not sexual intercourse had taken place immediately prior to death. The last aspect of that is unnecessary for me to consider because the defendant's statement supplies that information.

The body of the deceased was badly decomposed and maggot infested to the point where determination of time of death was, at best, going to be difficult if not impossible, nor does the evidence sufficiently illuminate whether or not it was even attempted; that is whether the pathologist even attempted, within the sphere of her discipline, to ascertain time of death.

But one thing that we know is that the

degree of decomposition took some time to come about, during all of which time, or that is to say from August 1st until her body was found, she was out of touch with her family, and found in the exact location, that is in the garage, and indeed in the position in the garage where the defendant said he last saw it.

Accordingly, the defendant is found guilty of the offense of first degree murder as charged in Count 1 of the indictment. He is also found guilty of the offense of first degree murder as charged in Count 2 of the indictment.

The defendant is found guilty of first degree murder as charged in Count 3 of the indictment. The defendant is found not guilty of the offense of first degree murder as charged in Count 4 of the indictment.

Now, having found the defendant to be guilty of the offenses as charged in Counts 1, 2, 3, 10, 12, 13, 14, 15, 16, 17, and 18, judgment cannot be entered on all of those counts. Some of them merge with other counts in the indictment, and under the doctrine of one act-one crime, judgment cannot be entered on one of the indictments which

charges the same act in multiple different-- Or the same crime inmultiple ways. Accordingly, judgment is entered on Count 1 of the indictment charging the offense of aggravated-- Strike that. Charging the offense of first degree murder.

Judgment is entered on Count 10 of the indictment charging the defendant with the offense of aggravated criminal sexual assault. Judgment is entered on Count 12 of the indictment charging the defendant with the offense of concealment of a homicidal death, and judgment is entered on Count 14 of the indictment charging the defendant with the offense of aggravated kidnapping.

Now, the defendant's bond is revoked and a P.S.I. is ordered. Now, it was my understanding at the beginning of this trial that if a finding of guilty was had of first degree murder, particularly the count charging felony murder, that the State would request that a capital sentencing hearing be held. Am I-- Is that still the State's position in this case?

MR. MURPHY: Yes, Judge.

THE COURT: Nonetheless, I'm going to order a P.S.I., a presentence investigation report. I

am not sure whether it's necessary. The statute, as I understand it, says that where a jury is going to be the sentencing body in a capital case, a presentence investigation report is not necessary.

On the other hand, the statute is silent as to what happens when the Court is going to be the sentencing body in a capital case, but does provide that no defendant shall be sentenced in a felony without a presentence report unless there is an agreement as to what the sentence should be. So I-- I'm not sure whether that's am ambiguity or oversight or what it is, but it doesn't seem to do any violence to order a presentence investigation and, consequently, it's ordered.

That's going to take at least three to four weeks. I'm going to be on vacation for the first two weeks of August. I mean the first two weeks of July. Mr. Murphy, when will you return from vacation?

MR. MURPHY: Judge, I should be back the first week of August.

THE COURT: I don't see how we can do it before then.

MR. MURPHY: That's fine.

THE COURT: I don't know that we can get to it the last week of June.

MR. MURPHY: I'll be out of town also, Judge. I'm going to be out of town for six weeks.

THE COURT: All right. It has to be-- Well see then I'll be gone again the first two weeks of August. I'll be gone the first two weeks of July and the first two weeks of August also.

MR. MURPHY: I'm returning August 3rd, Judge.

THE COURT: I'll be gone. I'll be back August 19th. I hate to put it off that long, but there is nothing that we can do about it, so--

MS. PLACEK: August 19th?

THE COURT: No, I don't think so. I'll be back on August 19th. What do we have set?

THE CLERK: Two cases already set that date. You want August 20th, Judge?

THE COURT: Is there anything set on August 20th?

THE CLERK: There are no other cases set yet.

THE COURT: How about August 20th?

MS. PLACEK: Fine, Judge.

THE COURT: Order of Court, August 20th.

(Rev. 2/18/93) CCCR-56

STATE OF ILLINOIS }
COUNTY OF COOK } ss

I, AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, in said County and State, and Keeper of the Records and Seal thereof, do hereby certify the above and foregoing to be a true, perfect and complete copy of VOLUME FOUR OF A FIVE VOLUME SUPPLEMENTAL RECORD CONSISTING OF THE ( REPORT OF PROCEEDINGS) ONLY. NO PRAECIPE HAVING BEEN FILED PURSUANT TO THE NOTICE OF APPEAL FILED IN THE APPELLATE COURT UNDER APPELLATE COURT NO. 95-0474

in a certain cause LATELY pending in said Court, between The People of the State of Illinois. WERE, Plaintiffs and JEROME HENDRICKS WAS, Defendant.

Witness: AURELIA PUCINSKI,
Clerk of the court, and the Seal thereof, at Chicago
In said County, JUNE 26, 19 96

Aurelia Pucinski
Clerk

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

95

88CR 12517

Transcript
App
to

APPELLATE Court of Illinois
FIRST District



SUPPLEMENTAL RECORD

Circuit Court No. 88 CR 12517

Trial Judge LEO HOLT

Reviewing Court No. 95-0474

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

JEROME HENDRICKS



from
CIRCUIT COURT
of
COOK COUNTY, ILLINOIS
DIVISION

88-12517

AURELIA PUCINSKI
Clerk of Court

VOLUME FIVE OF FIVE VOLUMES
SUPPLEMENTAL RECORD

RDP

Per _____
Deputy

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS )
)
-vs- ) No. 88 CR 12517
)
JEROME HENDRICKS )

MOTION FOR NEW TRIAL

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause on Tuesday, the 20th day of August, A. D., 1991, before the Honorable LEO HOLT, Judge of said Court.

APPEARANCES:

HON. JOHN O'MALLEY,
State's Attorney of Cook County, by
MR. JOHN MURPHY and
MR. SCOTT CASSIDY,
Assistant State's Attorneys,
appeared on behalf of the People;

HON. RANDOLPH STONE,
Public Defender of Cook County, by
MS. MARIJANE PLACEK and
MR. VINCENT LUFRANO,
Assistant Public Defenders,
appeared on behalf of the Defendant.

THE CLERK: Jerome Hendricks.

MR. LUFRANO: Vincent Lufrano on behalf of Jerome Hendricks.

MS. PLACEK: Your Honor, for the purpose of the record, Marijane Placek, M-a-r-i-j-a-n-e, P-l-a-c-e-k.

Your Honor, this matter, I believe, is scheduled for the hearing of motions for new trial and for sentencing in this case today, Judge. We are in receipt of the pretrial -- presentence investigation. Although I sent it through the office, the State informed me this morning they didn't receive the motion for new trial. I sent somebody to the office, to zerox a copy for the State, per the State's request, Judge, and Mr. Lufrano also stated to me that the transcripts were not prepared as per this court order.

THE COURT: Have you filed a motion for new trial?

MS. PLACEK: Yes, I did.

THE COURT: When?

MS. PLACEK: I filed it at 26th Street and sent it over. That's the date stamped copy that I am having zeroxed for the State.

THE COURT: Do you have a copy of it?

MS. PLACEK: I am having copies made at this

time, Judge.

THE COURT: The half sheet here does not indicate that the motion was filed. That does not surprise me, if you filed it at 26th Street, and if you have a stamped copy --

MS. PLACEK: I do, Judge.

THE COURT: I will consider that as being filed. We'll just update the half sheet.

MS. PLACEK: Your Honor, I did, and I asked the clerk's office to send it over to the Markham clerk's office, but I know sometimes these things get a little awry, should we say.

THE COURT: If you are going to be in a position to do so, I will hear the arguments on the motion for new trial before the noon hour. If not, I'll put the whole matter over until after the noon hour and we'll hear the motion for new trial and, if it's denied, we'll go into the other aspects of this case.

MR. MURPHY: Judge, I would ask that it be put over until after the noon hour. I have not read the motion yet.

THE COURT: 1:30 P.M.

MS. PLACEK: Fine, Judge.

THE COURT: Ms. Placek, if you can get me a copy of the motion prior to the time we reconvene, I will also take a look at it.

MS. PLACEK: Fine.

(Whereupon, the above-entitled cause was passed, after which the following proceedings were had:)

THE CLERK: Jerome Hendricks.

THE COURT: Mr. Murphy.

MR. MURPHY: Yes, Judge.

THE COURT: As I indicated to you when this matter was before us earlier today, the half sheet does not indicate the filing of the defendant's motion for new trial. On the other hand, Ms. Placek has handed me a stamped copy, stamped by the clerk's file stamp, indicating that motion was filed with the clerk of the court, on June 18, 1991. Accordingly, I am going to ask the clerk here to update the half sheet, to reflect that filing date.

MR. MURPHY: Judge -- I'm sorry.

THE COURT: You may respond.

MR. MURPHY: Your Honor, I would just indicate

for the record -- may I look at the Court's copy of the motion for new trial, for a moment.

(Document handed to Mr. Murphy.)

MR. MURPHY: Thank you, Judge.

Judge, for the record, we would object to the timeliness of the filing of this motion.

And I know the Court has to look only, can look to the stamping of the clerk's office, to determine the date. What the record does indicate is that this case was -- there was findings of guilt on this case, on May 20, 1991, that this case was continued to this date.

THE COURT: I don't think that's quite correct.

MR. MURPHY: I'm sorry, May 30, I stand corrected.

And that the case was continued from that date to this date, order of Court. In the interim, as I understand it, the Court did not receive a copy of the motion for new trial; the State's Attorney's Office, to my knowledge, did not receive a copy of the motion for new trial; certainly, Mr. Cassidy and I did not receive a motion for new trial.

There is a stamp on this motion which indicates, actually indicates April 18, with

no year on it, and then written over April is J-u-n, the year 1991 is handwritten in. There are initials which are hard to decipher. It appears that the first letter is either R or P, or whatever letter it is, and second letter is a K. I don't know what that designates.

For the record, Judge, we would be objecting to the timeliness of this motion.

MS. PLACEK: If I may be allowed to respond, your Honor.

THE COURT: You may.

MS. PLACEK: If the Court wishes, in this particular matter, Judge, I kept the worse motion for myself. When I say the worst motion, the first motion stamped. RK is the initials of the clerk who, in fact, stamped it, Richard Kerr, K-e-r-r. The matters were sent both to the State's Attorney, through the interoffice mailing, Judge, and was sent to the Court, through the clerk's office mail. I apologize, but I would point out to Counsel, Judge, if there was any attempt at fraud or any sort of misleading, I would suggest that you have a copy of a motion stamped a month before the finding would not only be premature, strike that, according to Counsel's

representation, two months before a finding, would not only be premature, but also would show certain powers of psychic ability, which I do not possess, dealing with, in fact, the issues as presented in the motion.

Your Honor, we would further state that if the Court remembers at the end, when the Court made a finding and there was, in fact, stated by myself an oral motion, rejected both by the Court, and a promise, at that time, to file written memorandum by myself.

In this matter, Judge, the suggestion, and we would suggest quite frankly that, number one, we apologize both to the Court and the State for what would seem to be the untimely getting of the motion. All we can say is that we complied with certain court rules.

Number two, Judge, irrespective that we would point out that the oral motion, in fact, bound the term, just as the supplemental motion holds and, therefore, we would suggest that, in fact, the point is moot at this time.

THE COURT: Do you care to respond, Mr. Murphy?

MR. MURPHY: No, Judge.

THE COURT: All right. The question of the receipt of the motion or copy of the motion by the Court or Counsel bears little or no relevance to whether or not it's timely filed. Timeliness, as I am using the term as it relates to this motion, means whether it was filed within 30 days after the finding in this case or as to preserve the case before the Court, and I am satisfied that this motion is timely, for several reasons.

One, the motion appears to have been filed on January -- on June 18, 1991. Now, absent any indication of fraud, which the Court will not presume, that's the date which it was filed. And in the unified court system that we have, the filing of the motion with the clerk of the court, in any of its divisions and wherever the court clerk's office may be situated, is a sufficient filing. It did not have to be filed here before the clerk in my courtroom or the clerk's office in this courthouse. It was sufficiently filed, if filed at 26th and California, or in the Daley Center or in any other facility where the clerk of the Circuit Court of Cook County maintains an office. That appears to be, from the face of the motion, exactly what took place.

Again, as I say, absent some indication of fraud, which the Court will not presume and I take it that Counsel and all sides in this case are conducting themselves in accordance with the rules of professional responsibility.

Secondly, I am not certain that whether this motion had been filed or not until after sentencing would necessarily be lack of timeliness. Motion for new trial could very well be filed, perhaps, after sentencing and, in many instances, ought to be. If there are errors in the sentencing process that is sought to be preserved for review, then a motion might very well be filed at that time.

In any event, I am going to ask the clerk of the court to update the half sheet in this case, to show the filing of this motion as of June the 18th, 1991.

Are both sides now ready for hearing on the motion?

MS. PLACEK: Yes.

MR. MURPHY: Yes, Judge.

THE COURT: Ms. Placek or Mr. Lufrano, I will hear you on your motion.

MS. PLACEK: Very briefly, Judge, the common

wisdom, quite frankly, on a bench trial, to file a motion for new trial is just some sort of standard procedure that, in fact, the trial lawyer does in order to perfect the appeal. The wisdom, as pointed out by the Appellate Court, is, in fact, standardized by the fact that there is a rule that the trial judge knew what he was doing when he originally ruled and, somehow, when you argue before that same judge for the purpose of the motion for new trial, you are asking him to, in fact, correct himself on things that you somehow found wrong.

At the risk of calling such a matter into question and, if I might, I would like to highlight certain matters which, in fact, were stated within our motion.

The first allegation deals, in fact, with, number one, which speaks of the fact that the defendant was not proven guilty by the State, beyond a reasonable doubt. The Court heard almost ad infinitum with argument over and over and over again, the Defense's contention that the statement as keyed to the crime as it was, in fact, perpetrated, did not meet this test. The simplicity of the statement was an act of consentual sex, an act of

consentual sex, followed up by the defendant leaving the young lady in the abandoned garage and seeing her some four days later, when asked to take out the garbage or investigate a smell, but always a denial of the deed of either forcible, what can be called rape, or the denial of a murder.

In this particular matter, Judge, and I speak as to the murder charges, we feel that this becomes important because of the fact that with the pathologist on the stand, who this Court, over the objection of the Defense, qualified as an expert, and in the questioning of the pathologist, much was, in fact, made of certain injuries, much was made about certain states of the body, but the problem becomes, and it becomes particularly important because of the fact that the State's theory has the young lady dead on the -- some eight days before her discovery. There is no asking and there is no showing by the pathologist of the time of death.

The reason that this becomes important is because of the fact that the State's own witness, the first officer on the scene, and again I apologize for drinking water, Judge, the first officer on the scene, speaking of, in fact, the body having certain

bodily fluids still there, a question directed by Defense Counsel to the pathologist, in fact, dealt with timing of death and dealt with whether or not there would be, after certain time, bodily fluids present.

The pathologist analyzing, yet still not either being asked by either side, and we would contend again it is the State's burden as to the time of death, stated that this would, in fact, be highly unlikely to impossible for the body to be out there for the length of time as proposed both by the Bill of Particulars on which the indictment rests and also as to the facts as argued by the State.

Now, since this question was neither asked and since, in fact, the defendant presented a reasonable hypotheses of what, in fact, he did do, and, in fact, the Court found him guilty of the aggravated criminal sexual conduct based on the age and the aggravated kidnapping based on age, and we would suggest that this goes even further to the logic of the theory that the statement, if believed as true, must be believed in total, and since the statements speak not of murder, but rather, simply again of consentual sex and leaving a living person

there, the State, by failing to tie up these ends again, failed to prove the defendant guilty beyond a reasonable doubt.

We would take this one step further, Judge, due to the fact that the State presented a witness and the witness was supposed to discredit, they brought him up from the penitentiary, to discredit what was allegedly the false alibi given by the defendant to the police.

We would suggest that the reason that this plays into the beyond reasonable doubt argument of the defendant is simply this. Number one, your Honor, this witness, under cross examination, was, in fact, forced to admit that, in fact, he was at the police station, not as the good citizen as portrayed under direct examination or for the purpose of giving information, but quite frankly, Judge, he was there as a suspect. Coupling this fact with facts previously argued and combining this fact with, again, with what the Court chose, and, again, we would apologize because although the Court did sign a court order asking for the transcript in this matter, and since it was ordered as a matter of fact as soon as the Court made its ruling, yet never received by the

Defense, the suggestion that, in fact, what we had here was an abduction, rape, and murder is absurd, because what we have here, in fact, is a young lady, where there is evidence before the Court that she ran away, where there was evidence before the Court that she was not only a runaway, but she had engaged in a fight with family members involving, correctly, the defendant, because she wanted him to be her boyfriend, therefore verifying the consentual sex.

And we also have the fact that the garage, where her body was found, was a common area, and we have also the police dealing into other suspects. The police dealing into other suspects and, again, lacking the time of death and still the moistness in body fluids combined with the expert testimony, in fact, makes the scenario, as pointed out by the State, an impossible one. In 90-degree heat, which was quoted by several of the State's witnesses as the outside temperature, and it was stated under cross examination by the witnesses who did, in fact, go to the garage, that the garage was hotter, the decomposing rate would be faster. Not only would the decomposing rate be faster, but, in fact, the evaporation of body fluids would also be

hastened by this matter.

The suggestion that the State didn't willfully ask what time or can the medical pathologist, to a degree of medical certainty, state at what date and what time the defendant, excuse me, strike that -- the victim was, in fact, killed. The fact that this was, this question was not asked, can be taken, in fact, in account by the Court.

And for this reason, Judge, and we would suggest that since all other questions by the State seem to be laboriously gone over, until the Defense was forced to proffer an objection of asked and answered, yet, this one question was steered clear of, and since the defendant has no burden, that we would suggest that this reasonable hypotheses, this reasonable hypotheses of innocence and not guilty or reasonable doubt was, in fact, indicative in this matter. Not only indicative in this matter, Judge, but we would suggest that even by the defendant's case, and that would be as to prior inconsistent statements of the family that we brought up, that they did, in fact, say that there was problems with this young lady, that she did run away, that she was perfect, until she started to get an interest in both

men, older boys and men, that this is the problem that we have, in fact, and views why this issue is brought again before this Court.

Combining these facts, it would be our suggestion that reasonable doubt was committed in the State's case and, therefore, in fact, the defendant should have been found not guilty, not of some of the charges, Judge, as the Court rightfully did, but, rather, all of the charges.

We would further suggest that the Court's finding, itself, is indicative of a confusion and I beg the Court's pardon if I misstate or if I somehow suggest an illogical inconsistency in the Court's mind, but we would suggest that it would seem to the Defense that what the Court did is the Court split its finding. In splitting its finding, the Court, in fact, exemplified what we feel is the confusion of the State's case. Their case rests solely on the fact that a statement was made. Without belaboring the point, the State is tied up with certain circumstantial evidence, as exemplified by the Court in his closing remarks and in his finding and, in fact, the statement deals always with consentual and freely taken acts.

The Court, in its finding, said that would have been fine if this, in fact, would have been an adult woman, but the problem was this was a 12-year-old girl. Rightfully or wrongfully, that was the Court's finding.

We would suggest that the confusion of the alternative, as presented by the State, that is not only the filing of the charges concerning violence, which the Court found the defendant not guilty of, and I'm speaking not of the murder case, and the presentation of the case by the State always showing force, not consent, suggests, quite frankly, that the reliability of the statement is that less than needed to meet the burden of proof, because of the fact that, number one, by always suggesting force, the State suggests to the Court that they don't believe this statement. I believe and, again, without dealing with the transcript, that, in fact, the State, in their closing remarks, suggested to the Court that this statement was a lie, as were other statements given by the defendant and as a lie, Judge, and as the Prosecutor stated that it is somehow unreliable, it would be the Defense's contention that the Court can't believe it either, because if anything,

the Prosecution isn't even standing for the evidence that they are presenting to the Court.

Now, this becomes relevant due to the fact that, again, the statement doesn't speak of any sort of killing or any sort of force that would indeed be inditia of a murder. Without this reliability placed within the statement itself, and I believe that's the word the Court chose to speak of the document signed by the defendant, without this being presented under a cloud of, or being presented as a matter of fact under a cloud of reliability, by taking it as a whole, believing part of it, that is, about the consentual sex and choosing to add other things to it, the Court is, in fact -- the Court has, in fact, extended it beyond the province that the Court has, in fact, the power to do. The Court can say that just as night follows day, because the defendant had consentual sex with a 12-year-old, that he must have murdered her.

For this reason, we pray the Court reconsider its ruling as to the counts found guilty of, that the defendant was found guilty of, and, in fact, grant the defendant a new trial on same.

If it pleases the Court as to the

others, we would -- up to Section 2, 3, 4, 5, 6, we would stand on the motion and previous arguments made. As to Section 7, the Court erred in overruling the defendant's motion for directed finding at the close of the State's case.

(Whereupon, there was a change of Court Reporter.)

STATE OF ILLINOIS )
) SS:
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS ) NO. 88 CR 12517
VERSUS ) CHARGE: Murder, etc.
JEROME HENDRICKS )

REPORT OF PROCEEDINGS

BE IT REMEMBERED that on Tuesday, the 20th of August, A.D. 1991, this cause came on for hearing before the Honorable LEO E. HOLT, Judge of said Court.

APPEARANCES:

HON. JACK O'MALLEY,
State's Attorney of Cook County, by
MR. JOHN MURPHY, MR. SCOTT CASSIDY,
Assistant State's Attorneys
appeared for the People;

MR. RANDOLPH STONE,
Public Defender of Cook County, by
MS. MARIJANE PLACEK, MR. VINCENT LUFRANO
Assistant Public Defenders
appeared for the Defendant.

VIRGINIA PETRITES, C.S.R.,
Official Court Reporter

(AFTERNOON SESSION)

(After a rotation of Official Court Reporters)

MS. PLACEK: Your Honor, if the Court please there were memorandums submitted to this Court dealing with the matter of corpus delecti. Without belaboring the point before this matter, the simplicity is this:

One, in the finding that in fact the circumstancial evidence substantiated the corpus delecti as presented within both the facts presented by the State at that time, and the defendant's statement, the Court had in fact made a leap of logic that again it is not allowed to, and without belaboring the point, the idea of the corups delecti is simply this, Judge, that the confession to be substantiated in somewhat, or the statement is to be substantiated somewhat by the facts, and that should be enough.

Agreed, Judge, that the confession in fact, or the statement, if you will, was substantiated by the fact of the consentual sex freely, admittedly, by the defendant.

If the Court wishes there could even be

a stretching somehow by finding a duty, which we seriously disagree with, after seeing the body in the garage, of the concealment of a homicide.

But the true logical leap comes through the fact, through the fact that again no statement has shown anything of a murder or of a killing for violence done.

For this reason, Judge, because the statement is neither corroborated by the facts, nor in fact additional facts are presented by the State to show that this man is in fact the primary mover, or in fact the person who committed this, the actor, as they are forced to do in the motion for directed finding, that the criminal conduct was as a result of a proximate cause of his actions.

The problem we have before the Court is simply this: Again, the paradox of either believing the statement or not believing the statement. If the statement speaks of consent and all is well, can the Court say well, we know that is a lie because there must have been something that happened afterwards, because eight days we find a dead girl in the garage.

If this is a logical leap that the Court makes at this particular time at the moment of directed finding, the Defense has argued in the motion and in the memorandum is simply this: This logical leap is not substantiated either by facts nor evidence. It is substantiated neither by the statement nor by anything attending same.

Therefore, Judge, we would suggest that by overruling the motion for directed finding, it is in fact an incorrect one. And we would pray in the alternative that the Court revise its ruling and grant defendant's motion as to the remaining charges, or in fact, in the alternative, Judge, we would ask that the Court grant our motion for new trial.

The matter next under consideration with the Court's permission, when in fact somehow -- and I will very lightly touch on it as to the reasonable hypothesis of evidence.

There was a motion presented by the State in their opening statement, they spoke simply of abduction, and this being the only man capable of doing it. They spoke not only of this; but they spoke of violence.

Yet, your Honor, what we would be suggesting to the Court, is simply this, in the presentation of the case, and without belaboring again time of death, without again belaboring the abandon garage scene of the death, without again belaboring the fact that again no evidence was presented by the State that that was not the scene of the death; again we would ask the Court to consider the body as it was covered with garbage bags, rather than being a depository of the body killed somewhere else, rather than the place of in fact being killed, combined with the fact that the police, although saying that only one suspect from the stand, were made liars by the State's own witness who said, "Yeah, I was a suspect, along with some other guys there, and we were all being questioned."

The suggestion of that being the origination of in fact something more or a reasonable hypothesis of innocence, or in fact somehow through the holes of the State's case, and I would point out again, in the Court's finding, the Court stated that the case was circumstantial, at best. That this, in fact, states that there is

a reasonable hypothesis left open, and not filled in fact, by any hypothesis suggested by the defendant.

This becomes vital when the Court considers that of course at the end of the case, when both sides have rested, the Court can look into every issue and every allegation as presented.

Mr. Lufrano and I, in the presentation of our case, if the Court remembers, just a continuation to the lacking of the State's case presented certain evidence, presented the fact and again, with all due respect, not meaning to mislead the Court in any way, that there was a policeman who supposedly saw, who supposedly took evidence after the girl was alive.

I would point out the Youth Officer who, conveniently, Judge, and was in fact the subject of a Brady Motion to dismiss, which we would include in our motion for the new trial at this time, which the Court denied.

MR. MURPHY: Objection, Judge.

THE COURT: Overruled.

MR. MURPHY: I don't believe the defendant

can make an oral motion, raise an issue orally.

THE COURT: She is simply asking me to reconsider as part of this motion, what happened in relationship to the Youth Officer, which I am fully aware of, anyway.

MR. MURPHY: For the record, Judge, it is our position it has not been raised in the written motion.

THE COURT: All right.

MS. PLACEK: If the Court wishes, Judge --

THE COURT: You may proceed.

MS. PLACEK: With the understanding in supplementing same with that Brady Motion, Judge, in asking the Court to reconsider the suggestion in fact that the Youth Officer, while in fact investigating the disappearance of this young girl, and investigating the disappearance of this young girl would in fact talk to two people whose names he failed to take; but who he showed the picture of, and who stated that they saw her after supposedly the defendant said that she was killed.

We would suggest to the Court that quite frankly, in presenting this not only in the Brady motion, but in fact in presenting this as part of

our case in chief, that in fact the State again left open the stop gap of a reasonable hypothesis and I believe opening the stop gap of reasonable hypothesis by having a member of law enforcement testify that he even took action, he even took the legal guardian out to that area of the town, out to that strip where in fact these two women, whose names he conveniently didn't get, saw this young lady, after the State contended that she was dead.

We would suggest that in fact that constitutes a reasonable hypothesis.

We would further suggest, Judge, that because of this, combined with the other matters previously mentioned, that in fact the Court should grant our motion.

Your Honor, if I might move on?

If the Court remembers we made several motions in limine at the start of this case. Rightly or wrongly, the motions were not ruled on. The motions dealt, in fact, with the defendant's past, with certain evidence that was speculated by the defense, and later confirmed in part of argument by the State, that that would be the

evidence that they would use, and that evidence in fact, which the Court did not make a ruling on; but did not in fact overrule the possibility that we would later strike specifically, what the State presented as proof of other crimes.

Now, the point being simply in dealing with the jury at the time of the motions in limine, and they were made timely, and they were made properly before the case, Judge. The Court reserved its ruling.

In reserving the ruling, Judge, as part of the motion in limine, which was submitted to the Court, not only as part of the motion in limine, which was submitted to the Court, but also, Judge, we asked that in opening statement, let alone as part of their case in chief, that the State be precluded from bring up these things.

The idea that in fact, that they would be allowed to address the jury and speak to them of things which in fact they couldn't bring up during their case itself, or in fact precluded from bringing up in their case. It seemed somewhat ludicrous to the defense.

The Court made a ruling which somehow

puzzled and confused both Defense Counsels and Mr. Hendricks.

The basis of that ruling dealt, in fact with that while I don't know -- and excuse me for paraphrasing you, your Honor -- I am not sure how I'm going to rule because I haven't heard the evidence. I am not going to try either of your cases, nor restrict it.

When that evidence is to come about we would ask in speaking as the Court, that you bring my attention to it, and we will have argument, then because then I will have more of a feeling for it.

By its defense counsel has no problem or slight problem as made at that time with that ruling. For the simple reason that Mr. Lufrano and myself objected to that sort of ruling for the simple reason we had no ability to plan strategy if in fact we didn't know what the State could or couldn't bring up. And I believe there were three separate points.

THE COURT: Mrs. Placek, I will ask you to hold your thought right there for just a few minutes.

I'm going to take a two-minute recess, and I'll be right back.

(Thereupon, a short recess was taken, after which the following proceedings were had:)

THE COURT: Ms. Placek, you may proceed.

MS. PLACEK: As stated, Judge, the particular point is although we objected at the time for the Court not to make a definitive ruling on motions in limine, that in fact we filed and suggested to the Court that although possibly anticipated by myself and Mr. Lufrano, by not ruling the Court was in fact somewhat handcuffing the Defense in front of a jury, because, as the Court knows, as an experienced trial lawyer, what essentially happens is that the most important statement that a lawyer makes not only to the jury, is not the closing but the opening. And therefore, Judge, it would become impossible for Mr. Lufrano and myself both to adjust and somehow think, since we weren't quite sure what evidence would be damaging or not be introduced into this case by the State, because the Court did not rule.

We somehow maybe didn't object as much

as we should; but the particular problem became this in response to the Court's ruling or non ruling on these matters.

Our suggestion is quite simply this: We suggested to the Court just as we were handcuffed in the opening statement by the Court to the jury if empaneled, what would happen, as if the State was allowed to front the material that it sought to introduce, and which the Court still made subject to the motion, made subject to the matter to the motion in limine that in fact the clever Mr. Lufrano and I seemed in front of the jurors -- and even if that evidence didn't go before the jury, they would simply think here we have two clever and young Defense lawyers seeking to keep that evidence we heard about in opening statements out.

There is, of course, diverse opinion among trial lawyers as to this tactic. The Court might say in answer, well, Counsel, I actually gave you a leg up by not granting that motion, simply by the fact that if I disallowed certain material, spoke of by the State in opening statement, you in your closing statement could in

fact state that the State either lied or didn't have the horses or made mistakes and point this out, their case was truly weak, and look what they promised you in opening statement, and they didn't deliver.

Well, with all due respect to the Court it is in fact Mr. Lufrano and I who set the strategy for the case; not the Court; not the State. And by in fact allowing or stating and denying our motion in limine, stating that the Court would allow the State to bring up that matter which was basically the subject of our motion, and which the State said in answer to the Court's question that yes, they were going to bring up before, and they were going to seek to have it brought into evidence, and yes, they would bring it in opening statement, this Court effectively handcuffed Defense Counsel in front of that jury, and, in fact, changed the very complexion at the last moment of this case. And by changing the complexion, it no longer became one of reasonable doubt, because we would be forced to listen to the State in their opening statements speak of the background of the

defendant, certain bad acts, certain matters about the garage, et cetera, as brought out in our motion. And not whether we should respond and give them credence, because we wouldn't know whether or not this Court itself would later rule at a later time that this was inadmissible matter when this Court found out more about this case.

Therefore, Judge, we, in a split second were forced to change this case from one that rested not only as to law as it always does; but also as to facts; and change in fact the strategy and waive a jury in our client's best interest, because as stated at the time of that argument, we didn't know where we were going. Because the State would be able to make the allegations, we wouldn't know when to respond, because we wouldn't know whether or not they would be able to prove these allegations. And by responding give them added credence.

For this reason, Judge, our Jury Waiver was anything -- and I would point out by the colloquial, that the defendant and the Court had itself during this waiver, that this waiver was conditional. It was conditioned by the rules on

the motion in limine.

I would suggest, Judge, that even on the requestioning, because the State never objected by this Court, the defendant always stated and conditioned this jury waiver, this was by advice of Counsel because the Court's most recent ruling.

For this reason, Judge, as the Court knows, it is a long standing principle within the law of the State of Illinois that a conditional waiver is not a waiver at all, and because in fact this Court ruled as it did on the motion in limine, this Court in fact handcuffed the Defense to the point that at the last possible moment of the complexion of the case, changed it, and the issues had changed. And Mr. Lufrano and I were forced to try the case to a bench, responding to what we felt would become our strongest issues. That was the issue of corpus delecti previously mentioned.

Your Honor, during the break, Mr. Lufrano spoke to me and reminded me in preparation of the motion, which he aided me in, and in the preparation of this argument, that as to

Sub-Section 6 dealing with certain Constitutional Rights that we were going to mention at the time that there were numerous motions: A motion to quash and a motion to suppress heard in this case Without belaboring the fact, we would suggest quite frankly that during the motion to quash and during the motion to suppress, the court listened quite patiently to the evidence, and ruled against the defense, dealing both with the statement and the arrest.

The interesting thing about the ruling, and of course we, as part of this Sub-Section 6 would be testing the correctness of the ruling and asking said Court, and if this Court denies our motion, reviewing Court to look at that motion, we would be asking the Court to consider one fact that the Court stated as part of its ruling on the motion to suppress and quash the arrest and suppress the statement. And that would be that the Court found the police officers in this matter completely untruthful, and the Court made in those words mention of that fact.

We would ask to incorporate that when the Court looks to the logical consistencies

stated not only within previous corpus delecti argument, but also hypotheses of innocence. And also, Judge, as to reasonable doubt.

Your Honor, the Court took three witnesses, these three witnesses dealt with the testimony of what is commonly known as other crimes or other bad acts.

Your Honor -- and I won't belabor that fact, because the Court in its final ruling did say that he did not consider this testimony during his consideration of the defendant's innocence or guilt during this case.

We would suggest, though, that the Court heard it, and just as the hypothetical inquiry given to psychology students asking someone not to think of elephants, that is all they think of for the next five minutes, that this Court heard that evidence, although we do respect this Court as a jurist, we would suggest that:

Number one, this matter did not fit into other crimes.

Two, that the defendant, by calling of certain police officers, impeached this matter even to the point of substantial evidence, taking

it out of what was now from the stand a jury -- other crimes to fit this.

And, thirdly, Judge, we would suggest tha even by allowing said testimony, said testimony -- and to refresh the Court's memory of one woman who complained supposedly of conduct done to her by the Defendant, which was not only not mentioned within the police report; but as a matter of fact, where she continued a social relationship with the defendant after that, going into a liquor store by herself and buying him a bottle, and to which she complained several days later to the State's Attorney's office, the same people who brought this man to prosecution, rejected the charges.

We would suggest, Judge, that all this served to do was muddy up the record, creating to this Court a negative and bad impression of the defendant, irrespective of the admonishments of the fact that the Court said it took no recollection of it.

Your Honor, the next matter is dealing with bias towards the Prosecution.

I push a bit to say this, and I must be

quite honest, Judge -- I debated long and hard before putting this in this motion. The reason I do this is because basically, I often wonder that as an advocate whether or not there isn't just too much fire in the blood during a trial, and whether or not in debating and going over my notes both with myself and with Mr. Lufrano, whether or not what I felt was bias was actually rulings by the Court which were true and correct.

And yet, as an advocate, I somehow, because of either being bullheaded or being a true advocate, continue to take them as the fact. Unfortunately, through the many days Mr. Lufrano and I spoke both in phone and in person over these matters, Judge, I found this bias unfortunately, somehow, to be there.

And I apologize to the Court and mean no personal offense in the next part of this argument, but feel I must make it for the point of the record, in order for an accurate and true defense of my client.

Your Honor, the first issue deals correctly with misstatement of facts in law which were in fact allowed to go uncorrected. And if

you will, Judge, if not uncorrected, unsanctioned by the Court by the State.

The first one, quite frankly, dealt with the fact that when the defendant turned over to the State the entire Youth Officer's file on this -- Now, when I say we turned it over to the State, these two Prosecutors at trial, although they said that they were ready for trial and said in fact that they were prepared for trial, in fact didn't know that there was -- or didn't investigate that there was a youth officer file, and that the youth officer's file spoke of the very issue that was the Brady Motion, that the girl was seen alive after supposedly, in the Bill of Particulars she was supposedly killed by the defendant.

The problem we have with the turning over of the Youth Officer's file to the State, and the problem that we have in the Court not granting the motion which in fact accompanied same, is the fact that we in fact, the Defense team got and received the Youth Officer's file not through any machinations or any close relationships that either I or Mr. Lufrano have with the Chicago

Police Department, or either through the impersonal matter of subpoena; but by the State's Attorney other than these two gentlemen -- the State's Attorneys who previously had this case, handing it over to us, and to Counsels who preceded us.

The State, during this fact, during the fact that they said they were taken by surprise by the information had on the youth officer's file, dealing with the girl being an habitual runaway, dealing with the statements that I previously brought up to the Court, was somewhat confused, and asked for a bit of time, if my memory serves correctly, Judge, and then went on to make certain motions.

These certain motions were in the form of motions in limine, Judge. And after we did turn over the file that we originally got from the State's Attorney's office, said they made a motion as to the matter of notice that they had no notice of it.

Now the problem here, Judge, as the Court knows the law in Illinois is once it is received by an office, be it a governmental

office, be it a Federal Government's prosecutorial office or the State's Attorney's office of Cook County, it is in fact alleged as received.

The question becomes even more puzzling when in fact if the Court remembers our entire motion to quash arrest with different State's Attorneys in fact dealt with the youth officer's file.

The Court made direct inquiry and spoke of that file, Judge, before in fact speaking of the motion in limine filed by the State in response to the surprise, that they were supposedly taken by the fact that there was a youth officer's file that made certain claims --

MR. MURPHY: Objection, Judge.

Judge, perhaps it is my ignorance, I have no idea what point Counsel is directing her oral argument to within the motion.

MS. PLACEK: Mistakes of law, in fact, Judge, made by the Prosecution, dealing with the Court's bias towards the Prosecution Counsel.

THE COURT: Paragraph 11A, Mr. Murphy, is what she is talking about.

MR. MURPHY: Thank you.

MS. PLACEK: The particular point is exacerbated by the fact in questioning the Court as the State's Attorneys whether they read this transcript that dealt primarily with the motion to quash. They said they had. And it became strange, because Mr. Ronkowski who previously had this matter, not only had the youth officer's file; but in fact as myself, made ample use of it And both Mr. Lufrano and myself saw it in his possession.

The point of this argument even further--

MR. MURPHY: Judge, I would object to arguments that are made outside the record.

There is no evidence to support this argument here that is in this record.

MS. PLACEK: Yes, your Honor.

THE COURT: It is argument, Mr. Murphy.

And I must frankly confess to you that this record is voluminous, and I am not altogether certain whether or not it is or it is not.

I am going to hear it, and rely upon my recall of what has transpired over the last year and a half.

MR. MURPHY: Judge, I will also argue and object to the argument, because I fail to see how this argument -- I know Counsel is getting to the point, how it relates to what is stated in 11A in any event.

THE COURT: It may never reach that point; but to the extent that she is developing it, and I take it that she -- She has a right to do it.

The objection is overruled.

MS. PLACEK: The particular point becomes -- And to refresh the Court's memory, Judge, it was during the cross examination of the first witness the State proffered an objection that when we asked whether or not the girl was an habitual runaway, they objected, and stated there was no place in the record or no report that stated that.

We showed same report to these State's Attorneys. They stated that they had never seen that report, Judge.

And then we went into the diatribe dealing with that, and Mr. Lufrano very kindly went to our office and xeroxed all of those pages.

The nexus of the argument, quite frankly, deals again with what we call the

misstatement of the Prosecution. The misstatement of the prosecution -- And again, I thought long and hard before making this argument to the Court -- is simply this:

This is one misstatement, misstatements have always been made to further their case. And the Court pointed out quite frankly and quite clearly for a year and a half, sometimes pleasantly and sometimes quite unpleasantly in the atmosphere of the Court, the problem becomes this -- We have been battling it out, and we have been fighting as you do in any murder trial, and every lawyer in this courtroom understands, including this court, that occasionally it isn't the evidence that makes the impression; but rather that which the Court thinks is the evidence.

This record is replete in mistakes up to the last day of the trial; and Mr. Lufrano making objection upon objection based on places where we were forced to show where our information came from, i.e. the explanation of the State and the youth officer's file, which these gentlemen claimed they never had, although their predecessors did.

We would point out that even in his closing argument one of the Assistant State's Attorneys again made a misstatement without sanction of the Court -- and I am speaking of the sanction of the Court specifically every time her conduct, which Mr. Lufrano and I deemed and made motions for, prosecutorial overreaching, it was in fact denied, stating that Mr. Hendricks, according to their theory of the case, was the last person to see her alive; not as a point of argument, but as a point of fact.

And when Defense Counsel and myself made vociferous argument on this stating that this culmination of prosecutorial overreaching for a year and a half that we were forced to bear and go through and leaving the impression that they are correct, not by logic and reason, but by loudness of voice, and stated that in fact the Attorneys Registration and Disciplinary Commission states there are certain rules that even Prosecutors must follow, and the wilful statement of a non-truth is one of those that the next day the Prosecutor came in and admitted his wrong; not sua sponte, but we would suggest quite frankly dealing with the fact

that the Attorneys Registration and Disciplinary Commission was involved.

The point being, Defense Counsel --

MR. MURPHY: Objection, Judge.

THE COURT: The objection to that argument is sustained.

MS. PLACEK: Defense Counsel can feel nothing but bias over and over, this overreaching is allowed, not only allowed, but yet when we make our motion time and time again dealing with this overreaching, it is overruled. And yet, as the Court points out, we go voluminously into records and we state over and over and over on the record Counsel and Judge alike that it becomes difficult after a while not only to remember exact instances that have not made it into our notes; but also, Judge, we would suggest that a trial among any witnesses as an impression constantly in pointing out in this trial as to the last points, sub-section B, I even complained several times that names were called by the Prosecutor of me.

It was put on the record through their courtroom talking to one another that it was stated when I was either making an argument, or in

the alternative when I was crossing a witness, said loudly enough for me to hear, and not for the record. This is an unpleasant task I bring before the Court. And quite frankly in my history I have never stated; but the point being I ask the Court for sanctions.

I use the phrase often, I am a stranger in a strange land here in Markham, for the simple reason this is my first case tried in Markham. I am not used to the peculiarities or idiosyncrasies that accompany every court building in this County.

The point being simply this, Judge, there is always a hampering and there is always a problem when in fact the Prosecution, over a lengthy trial like this, is not only allowed to make misstatements; but also, Judge, even when reported in open court, and the record will bear same, to make certain statements against Defense Counsel and yet condescending, with all due respect to this Court, for whom I have much respect -- please don't believe by this argument I have anything but respect for this court. But again, these remarks are to be both taken as

sexist, not only that, Judge, but we brought to the Court's attention there's not even an admonition but rather an admonition to both sides.

The point I am making Judge, is that this is what we quite frankly feel is the reason that we feel there was a certain amount of tipping of bias by this Court to the Prosecution in this case, and thus, unpleasantly, we have to make said argument.

We feel this becomes necessary on behalf of Mr. Hendricks.

Again, as I stated, both Mr. Lufrano and myself have thought long and hard before putting this to paper for the simple reason, Judge, both he and myself have nothing but respect for the Court, and we are somewhat puzzled during this trial by certain actions taken by the Court in either the non-sanctioning or the non-correction of what we felt was guilty behavior.

Because, Judge, with all due respect to the Court, name-calling can never, can never be considered proper or not somehow some sort of overreaching.

I would again ask the Court to forgive me if I misinterpreted the evidence somewhat different than the Court. I could only rely, even though an order was signed for a transcript, on my memory, Mr. Lufrano's memory, our collective memory and our collective notes from this case, our suggestion quite frankly is because the errors of law created in the record -- not only the errors of law created in the record, but also the certain errors of fact -- and with all due respect to the Court in the compatibility of consentual statements speaking of consentual actions to somehow being able to leap to fact of violence presence such a hypothesis that in fact cannot support specifically a verdict of murder in this case, Judge.

Thank you.

THE COURT: State.

MR. MURPHY: Judge, I'm going to try to respond to these arguments that were made in the order that the Defense made them to you -- the defendant's attorney made them to you in this motion for new trial, as best I can.

Some of these arguments I will not

respond to because I think they are arguments that should be made during the course of the trial.

There has been a complete and thorough record made, not only through the defendant's argument; but our response -- and the Court has enunciated its position with respect to those issues very clearly in the record. And I don't believe it is necessary to regurgitate again those particular issues.

But there are some I wish to touch on.

The Defense argues to the Court that the time of death is an issue in this case. Your Honor discussed that in your ruling:

We are not required to prove beyond a reasonable doubt the time of death of the victim in this case.

There are inferences that can be made with respect to the time of death, considering the condition of Denise Johnson's body, considering the date and time when she disappeared, and the location.

I believe that those inferences were properly made by the Court based on the evidence in this case.

The Defense argues to the Court with respect to the first point as to whether or not we have proved the defendant's guilt beyond a reasonable doubt.

That is standard, if I understand the defense correctly, is whether or not he established a reasonable hypothesis of what he did. Judge, that is not the standard of the law in this case. The standard of law is whether or not there is a reasonable theory of innocence, if in fact the evidence is circumstantial, which was the case in this case.

So the Defense misstates the law to the Court in the oral argument as to the motion for new trial.

The Defense also makes much of the statement in this case, and the argument the Defense makes in the motion for new trial as was the case at the time of trial based on a faulty premise.

The Defense argued to this court with respect to the statement that was offered in evidence that the Court, if I understand correctly, must either totally believe what the

defendant said in his statement, or must totally discount what the defendant said in his statement. And I submit to the Court that is not correct.

The Court is the trier of fact, the Court is the person who assesses the credibility of the witnesses, has the position of being able to determine what you believe or what you don't believe, as to what a witness says or as to what the defendant in his statement says.

And what is important about this statement, the Court may not even agree with the State in this case, and our position was that statement was absolutely outrageous and totally beyond belief.

But what is important about that statement, and the Court relied on this, is that statement connected the defendant, Jerome Hendricks, to Denise Johnson, and connected him to her on the night in the garage around the date when she disappeared.

Another argument which the defendant makes, which is based on a faulty premise, and has made time and time again, not only in this trial but in the pre-trial motions as well, is that

somehow what the defendant says in his statement is believable because Denise Johnson, if you believe what the defendant is saying, was a prostitute. That this 12 year old girl was a prostitute, and therefore it is easy to believe she willingly would go to a garage with the defendant and have sex with him on a garage floor, willing to participate in such an act.

And, Judge, our response to that, as it was at the time of the trial, there is absolutely no evidence of that whatsoever. And as Mr. Cassidy said at the time of the trial, not only did we argue to the Court and say to the Court it is absurd to believe a 12 year old girl would willingly engage in these acts; but it is absurd to believe based on the evidence in this case that this girl, Denise Johnson, would willingly participate in acts with the defendant.

And I believe the Court properly rejects the Defendant's theory of the defense in this case.

The Defendant argues to the Court that your Honor's conclusion, or your Honor's findings were indicative of confusion. And your Honor, as I

review the findings, and I don't mean to speak for the Court; but I think what is very clear in the Court's findings is the Court had a question -- or you had a question in your mind as to whether or not we proved beyond a reasonable doubt whether force was used by the defendant during the course of the sexual assault.

And your findings I believe are based on your conclusions with respect to that issue. And I believe the Court's findings are consistent with respect to that line of thinking.

The defendant argues that the Court improperly denied a motion for directed finding. And, your Honor, I believe, as I will indicate many times during the course of this argument, your Honor provided an opportunity to the Defense and to the State at each turn during the course of the trial, for full and complete hearing and a full and complete opportunity to argue whatever points we felt were necessary.

And a great example for that is the motion for directed finding, because in that particular case the defendant filed a written motion raising the issue of corpus delecti.

The Court continued this case for a lengthy period of time to allow the State to file a written response. The Court then allowed the Defense an opportunity to file a reply brief.

After thoroughly reviewing the issues, the questions of fact with respect to the Motion for directed finding, the Court ruled.

If anything, the record in this case shows that the Court was thorough in giving the defendant every opportunity to argue whatever issue he wished to raise with respect to the issues on the motion for directed finding. And the Court properly ruled that we had established a corpus delecti.

The defendant argues to this Court that there is evidence that two people definitely saw Denise after this incident. Well, your Honor, first of all, there's no evidence of that in the trial of this case.

What the evidence or the record does show is that there were allegations made by the Defense that there was such evidence. The Court allowed the defense an opportunity to present that evidence, and it was clear from the record that

this was in the form of hearsay evidence. And the Court conducted what I believe the Court described as in chambers hearing, a full hearing, allowing the defense to call whatever witnesses they deemed necessary to present whatever evidence to the Court they deemed necessary, in order to show how this evidence should be admitted; how this testimony should be admitted into evidence.

And after a full hearing the Court properly decided there was not a basis to allow hearsay testimony.

And it was clear from the record with respect to this issue not only did the Court properly rule, but what is clear is the defendant attempted to get in hearsay testimony without allowing the State an opportunity for cross-examination. And properly, the Court ruled that was not the case.

What is also important with respect to that issue, Judge, is the defendant had this information for a lengthy period of time, and the defendant, as the record would show, or perhaps shows by their failure to act, did not locate those witnesses and bring those witnesses in to

testify.

Your Honor, the point the defendant argues is that because of the actions of the Court, the defendant did not make an intelligent jury waiver. And within the motion itself there is no -- it is not clear as to what waiver the defendant is referring to.

Apparently, we are to conclude from the oral argument they are referring to the waiver of jury as to the issue of guilt or innocence.

And I believe that the defendant, in the oral argument to the Court, misstated what actually occurred prior to the trial.

The State filed a motion to advise the defendant or inform the defendant that we intended to offer evidence of other crimes.

As I understand it, Judge, there was no motion by the defendant in limine to preclude the State from offering evidence of other crimes. And I don't recall a motion in limine on the part of the defendant to preclude the State from arguing that issue to the jury in opening arguments.

It did become an issue, because the State filed a motion, and there was an objection

on the part of the Defense. But when the issue came to light again, as has been consistently followed by your Honor, you wanted an opportunity for a full hearing.

And as I understand the Court's ruling at the time, you wanted to allow the opportunity to hear the evidence and conducted an in-camera inspection, or in-camera hearing, outside the presence of the jury, so the Court could properly rule on whether the evidence that we sought to introduce should be admitted as evidence of other crimes.

And at the time that we raised that motion to offer evidence of other crimes, as I understand it, the Court took it under advisement. At that time the defendant never told the Court that because of the Court's ruling with respect to this motion that they were being forced into making a jury waiver.

The defendant never asked this Court to conduct the hearing before the jury selection began with respect to the motion to offer evidence of other crimes. The defendant never asked this Court to conduct this hearing before opening

arguments.

So really, Judge, the record doesn't support what the defendant says to you, that they were forced to waive the jury because the Court had not conducted a hearing at the time that they waived the jury.

And it is interesting to note, Judge, that the defendant waived his right to jury after the jury selection process began.

MS. PLACEK: [redacted], Judge.

THE COURT: Overruled.

That is a fair characterization of what happened.

The objection is overruled.

MR. MURPHY: As I recall, Judge, the Court admonished -- a number of potential jurors were brought into this courtroom, the Court admonished the jurors, and the defendant and his attorneys had an opportunity to view the potential jurors. And even before the Court began to question each individual juror the Defendant waived the jury.

The defendant argued in point 10 of the motion for new trial, that the Court erred in

receiving evidence as to evidence of other crimes.

And I believe, as I understand the defendant's argument, that somehow the Court was prejudiced when we offered this evidence, and that somehow the Court's ruling or decision with respect to guilt or innocence was effected by the evidence the Court heard of evidence of other crimes.

Well, Judge, this was a bench trial. What do we have to offer of other crimes and to have a determination made without asking the Judge to hear the evidence? The only recourse we have, Judge, is to offer you the opportunity, whether it be by a proffer of evidence, or by actual testimony to hear that evidence and determine whether or not there is a basis to offer the evidence of some other crimes.

As I understood what occurred in this case, the Court heard that evidence, and at the time wanted to reserve ruling, or at least when the issue was initially brought up, wanted to reserve ruling.

As I understand the Court's ruling at

the time of the guilt or innocence, the time of the findings in this case, the Court did not make any reference whatsoever to the evidence of the other crimes. And as I understand the Court did not rely on that in making your determination.

And even at the time we offered that evidence, Judge, as I understood your comments, Judge, that evidence was not being considered as evidence of other crimes.

In point 11, Judge, the defendant argues that the Court showed bias toward the Prosecution --and like much of this motion, Judge, there is a complete lack of specificity as to what the defendant is actually raising as an issue.

Orally the defendant argued something about youth files. And I fail to see, Judge, how whether we had certain files, or did not have certain files or reports by the Chicago Police Department, how that constituted a misstatment of fact and law.

As I understand the rest of the defendant's argument, or actually I fail to understand how the rest of the defendant's argument, where they specifically point to any

instances where the prosecution of this case misstated any facts or law in this case.

There's been no specific allegations made by the defendant.

And the same goes for point B, Judge.

The defendant spends a lot of time talking about prosecutorial overreaching; but they fail to really specify any examples.

I believe there was one pointed to, and that was it.

There's a reference made to the fact that there were personal attacks made against Defense Counsel. Your Honor, I don't know what Defense Counsel is talking about. There is no evidence whatsoever in this record that Defense Counsel was attacked in any way whatsoever.

I have no knowledge, and I believe I speak for Mr. Cassidy as well, of any evidence or any attack on Defense Counsel, personally, in this case.

It is easy to get up and make allegations; but there is no evidence in this case whatsoever to support what the Defense says with respect to this issue.

As I understand, as I worked on this case, your Honor, I believe that there were attempts to induce attacks on Defense Counsel; however, there was no such attack made as the Defense Counsel claims.

Your Honor, the defendant had a fair trial. The defendant had hearings with respect to each and every issue he claimed he was entitled to a hearing on.

Your Honor has bent over backwards with the defendant to allow him an opportunity to have his say with respect to each issue which he feels should be addressed.

And I believe that this motion for new trial should be denied.

THE COURT: Defense?

MS. PLACEK: Very briefly, your Honor.

The word, prostitute, was never used by Defense Counsel, as a matter of fact, in both my opening and closing, I stated that was not to be the claim.

The State asked where did he get the information. Again, if the State wishes to go through misstatement of fact, again there was

always them who said that the defendant will try and paint her as a prostitute -- never us.

Where we got our information from was her family, as told to the police, and through the right of impeachment.

We all stated -- and the theory of the defense's case has always been the same as stated per the police reports on the missing person. Hatibual runaway, became a problem when in fact became interested in older boys and men. Was a problem child, and often tried to elude her guardian by going to her grandfather, and her grandfather would lie about her whereabouts.

The point is, Judge, rather than simply wipe this away and say this is something within the Defense's imagination, this is their attempt to smear.

It was argued at the time -- again this poor, dead girl, again the words of the State by making her a prostitute, was never in fact stated.

The reason we brought it up before the Court, Judge, and the reason again -- and incorporating this argument of the State, as to sub count 11, is simply this, Judge: The

information was clearly there.

This is not a motion based on speculation, but based on the transcript.

If the evidence as presented was incorrect, then it was geared incorrectly at the time of her missing by her family. And if it was somehow transposed, the evidence given by her family of these traits, which by the way, again, in both arguments, we never spoke of her being a prostitute; but rather an habitual runaway in the terms I previously mentioned. Then the family lied to the police in the missing person's report, and the police, somehow, lied in some conspiracy to help us in this matter.

The point of the State incorrectly, stating the argument and the information is in fact of reliable sources.

Next as to the matter of hearsay which the State claims was so unreliable of the simplicity of the matter in the Brady hearing where we moved for dismissal because of the government in action. In fact, there was evidence of an attempt to find these two women and the youth officer himself and talk to these women,

that is these women, Denise Johnson's picture at the time during the chambers hearing, your Honor. He took no action, and I admitted it from the stand after the detective said he didn't believe we found a body, so therefore although he put down -- and I believe it was stated on the record as to certain identification done where these women said they stood and saw the young lady days after the young lady was supposedly killed by this defendant. This police officer did more, he took the guardian of the young lady who was missing for several days, and took her to the area where in fact these ladies said that they saw her.

The point being is that what we suggested to the Court then, and as we suggest to the Court now, that if anything unnatural -- and I am speaking of the defense's supposed natural enemies in the courtroom, the police, the same police who arrested my client, although a different branch working on the missing person and the state of law, what is known to one branch is known to all the branches, is the presumption, what is known to one branch of the State's Attorney's office should be known to all the

branches, because of the simple fact the officer said I rely on this information. But on the other hand when the detective said we found a body, I just stopped looking for her. But I did find that evidence reliable enough to take action, to take as we saw from the stand the grieving guardian at that time, the worried and probably grieving guardian out on the street and look for the girl. Therefore the State's allegation that somehow it is some sort of flight of fancy on the defendant's part, somehow the judge of the credibility of the witnesses can't say I discount that because this is just a typical defense counsel's attempt to blacken the victim.

It can't be given credibility for the simple fact that an habitual runaway became interested in older men and boys. The problem child was made by its relatives. It wasn't made by a bunch of our investigators coming into court, but in fact by the Chicago Police Department's own report as told to them by the relatives of the victim.

Your Honor, if I might, I would totally discount Counsel's statement that somehow this is

some sort of a thing that can be disregarded.

It fits into the reasonable hypothesis simply like this: based on police officer's reports that action was taken as a result of a conversation that the investigator -- to look for this girl, hightened as the result of a conversation and a relative, a civilian was brought out and able to help. Based on the fact that we have a girl in the spring of puberty somehow going to the forbidden flame. So based on the fact that the State stated a different time of death, based on the fact that all this is a conversation relating to a time and actions after the suggested time of death, the reasonable hypothesis of death is not established by some discredible witness by the Prosecution, but established by the actions of the Chicago Police Department themselves.

Therefore, Judge -- and we have all been sitting at the same trial -- I would suggest to the Court in reviewing its notes, as to who the defense called and who the defense called during the trial itself, were in fact members of the Chicago Police Department, dealing with the

missing persons and dealing with the reasonable hypothesis.

Now, Counsel says for some reason it escapes his mind that these separate motions in limine were filed; but in fact there was some sort of response to their motions for other crimes.

The record will bear me out -- the record would not only bear me out as to the objection I made to opposing Counsel, the record will bear out this fact, and this fact simply is that the Court knew we had motions in limine from the defendant and at the beginning of the motion we began to argue.

Since the Court has become aware of my style of argument, the Court knows I am not brief. But the Court, unable to secure a jury, suggested to both Counsel for the purpose of scheduling that the jury be at least admonished, told it belonged to this courtroom and sent it to lunch. And in the meantime Counsel would in fact deal with the issue before the Court.

The idea to somehow try and mislead this Court in thinking, well, Counsel agreed to a jury selection until they looked at the jurors, is

absurd. Because lengthy argument was made, and the record will bear me out that it wasn't until late in the afternoon that Counsel not only asked for a different venire dealing with the fact that they were asked to wait, but excuse me, in the alternative, we suggested to the Court the motion in limine that the State would not be allowed to bring up in opening statements matters that we clearly objected to.

Therefore some say we looked them over and didn't like them, and that was what made up our minds, is absurd.

The same argument proffered at the motion for new trial was made at that time, Judge, and it was made -- we wanted to be able to give this man, the defendant, the best defense we could. And we couldn't, if the Court handcuffed us.

Finally, as to the somewhat confusion about the fact that they don't remember about certain misstatements of facts of law, I called the Court's attention, and I called the reviewing Court's attention not only to the apology made the next day; but to the objections made throughout the closing remarks, through the trial. And the

issue becomes this: Simply this, just as the Defense Counsel is meant to put on a trial with all their skills and with all their ability in order to defend their client, we are still required to play within the rules; not put on perjured testimony, not make up shall we say false issues before a jury that we feel cannot be borne out later.

The duty of the State becomes a higher one; the higher one is quite frankly this: Defense Counsel need only turn over that which we in fact are planning to use during trial. Per Brady versus Maryland, the State must even turn over that which is in fact helpful to the Defense.

I know not why these Prosecutors are somehow mysteriously, were missing the youth officer and missing persons file which was extremely helpful for the defendant. Perhaps their office sent them out without it.

All I know is Illinois law requires it.

I know not what other matters were missing from their file, or for that matter, since

I'm not the first attorney who had this case; but others had it before me, from my file due to this somewhat questionable reasoning but all I can say, Judge, is that that becomes the true problem, that how can an experienced Prosecutor read a motion when a file is referred to constantly throughout the motion, and when it speaks constantly of the fact that she was supposedly seen alive after the time of the bill of particulars, that she was an habitual runaway, and yet object when the defendant brings it up.

I blush to go to the next part, but if the Court needs examples, I will give him two examples.

And I'm speaking about personal attacks. First, my turning toward both Counsels during arguments similar as this, and looking directly at them and asking what they called making an offer of proof before this Court.

Next, that the Court remembers, and I understand it is the Court's habit, the Court speaking to the State and conducting what it speaks of as a law school for the State, that it was not. This Court, and the State, had a rather

friendly exchange. I stated something to the Court. The Court -- you then asked to acknowledge something to the State that I had heard the two gentlemen as they spoke both loudly to one another say. The example of the record specifically is the Court said I don't think that is proper. And I said quite frankly, Judge, occasionally I have a problem telling what is proper when you are constantly being called by your opponent or constantly being referred to as something that lives in a kennel, rather than using the word, bitch, which I spoke to both State's Attorneys after the proceedings, about what I heard.

I don't understand the fact that there seems to be a lack of memory of this matter; but, Judge, the record will bear it out.

I disdain this argument for the simple reason that, number one, believe me, I take neither personal offense, but I marvel at the fact that it was done.

Thank you, your Honor.

THE COURT: I would like to address some of the issues raised, that you had in this motion.

Many, if not all of them, have been addressed at one time or another, in one way or another, as we progressed through this trial, and the pre-trial motions.

And I would like to start and address the issues chronologically in the way in which this case was brought to trial, that is starting from the time this case came into the courtroom, until today's date.

And in that regard, what arises first, what was argued to me, as nearly as I can recall, my view of and comments regarding the defendant's motion to quash arrest and suppress evidence. And the remarks that I made concerning the credibility of the police officers who testified in that regard.

And it is true that I indicated that I thought that the credibility of some of the police officers was less than what it ought to have been as it regarded the question of whether or not they intended to arrest the defendant when they proceeded to his home, what transpired in his home, the conditions that existed outside of his home, and things of that nature.

But whether or not I agreed, or however I assessed the credibility of those police officers has little or no bearing on the law that was applicable to the defendant's situation.

At the time that the hearing commenced, the settled law was embraced in Payton versus New York, which gave rise to a different thought pattern; but by the time we concluded the hearing, Harris versus New York had been decided, which gave rise to an altogether different line of reasoning, as to whether or not the defendant could prevail on his motion and receive the relief which he sought, which was to suppress the evidence, or the statements taken from him at the police station.

I concluded in reliance upon -- or not in reliance upon but as mandated by the United States Supreme Court decision in Harris versus New York, that no constitutional right of the defendant as it embraced his 5th Amendment Right against self-incrimination had taken place. Nor had a 4th Amendment violation taken place so as to infirm his 5th Amendment Rights.

What had essentially happened was that

Payton had been violated, at best, without any consequences to the defendant that would have necessitated the Court suppressing anything.

And so it is not fair to say that I had assessed the credibility of these police officers in such a way as to permanently infirm their testimony.

I was talking about the rational listing of the evidence as it impacted upon the defendant's motions to suppress.

When this case was called for trial, whatever the Court said in regard to a ruling on the State's request to introduce evidence of other crimes, or the defendant's motion in limine to bar -- and we will talk about that later; but whatever was said in that regard, or any other ruling of the Court, could not by any stretch of anyone's imagination have caused the defendant to relinquish his right to trial by jury.

Strangely and strikingly enough, while Counsel argues at length the depravation of the defendant's right to trial by jury by the Court, not a single authority from any jurisdiction anywhere has been cited to the Court to suggest

that a pre-trial ruling of the Court can infirm an otherwise knowing and intelligent jury waiver.

What is at issue when the defendant waives his right to trial by jury is one that he knows that he has a Constitutional Right to have a jury decide his guilt or innocence. He has a right to know that that Right, that is the right to have a jury trial, is personal to him and cannot be taken away from him by his lawyer, by the Prosecutor, or by the Court.

He has a right to understand the nature of the jury. How it is selected, what it does, and the fact that it requires unanimity for the jury to find him guilty of an offense.

When he has understood all of these things, he is in a position to assess whether or not he wishes to waive that right, and submit his cause to the Court.

Now, granted, making that decision is critical in many respects, and in many instances to the defendant, and it is often a difficult decision to make; but because the exercise of Constitutional Rights or the waiver of Constitutional Rights present difficult decisions

for a defendant, does not mean that his choices are unintelligent.

Rather, what transpired here, in my judgment, which again may or may not be accurate, is that the defendant made a tactical decision based on matters and things which I do not know, and am not concerned with, that he should not try his case to a jury -- which is precisely what every defendant does when he or she waives the right to trial by jury. They make a tactical decision based on conferences with, and guidance by one's attorney.

And it is inconceivable to me that a skilled practitioner, either as a Prosecutor or as a Defense Attorney, would advise the defendant that you have been wronged by the Court and remedy lies ahead for you if the Court makes errors in ruling on issues, and you waive your right to trial by jury, because supposedly of those errors, that you can be relieved of that jury waiver somewhere down the line.

That is a position that is unknown, as far as I am aware to the law, and apparently as far as Counsel is aware, inasmuch as no authority

to that effect has been brought to my attention.

The defendant, just as he before that waived his right to a jury at the sentencing hearing with full intelligent, understanding thereof, also waived his right to a trial by jury on the guilt and innocence phase. And the matters -- not that one was a Constitutional Right and one was a Statutory right, but the issue is that the defendant knew what his rights were; knew the nature of a jury, knew the jury's function, as distinguished from the Court's function, and decided to submit his case in its entirety to the Court.

The issue of whether or not the ruling on the motion of the other crimes motion was one which was a matter of law, Counsel approaches that problem as if a motion in limine requires a definitive ruling by the Court at the time the motion is presented to the Court, and there is no such rule of law to that effect either.

Motions in limine can be made and ought to be made in many instances in order to assist the Court in keeping the evidence in as pure a form before a jury as is possible. But they can

often be used as a mechanism for feeling out, pre-trying, testing the winds, if you please, of where the Court is going.

That may be equally fair game also. The difficulty with this issue, as I saw it, was without a full understanding of the facts of this case, which the Court could not have prior to having heard any evidence, no matter how sincere and how articulate it was presented to the Court in limine, it is easier to make the decision once one has a framework from whence to make it; and so I elected not to make the rulings until I had more of an understanding of what the facts in this case would disclose.

That ruling, like any other pre-trial ruling, could not possibly have caused the defendant to do anything other than make a strategy decision in regard to whether he wished to have his case tried by the jury or by the Court.

Where, if you please, what would have been the result of the Court saying to the defendant, I decline to accept your jury waiver, and so the Court is damned if it does, and damned

if it doesn't.

And, of course, the Court ought not to interfere with the defendant's decision as to how to try his case, if in fact the Court can determine that he knowingly and intelligently is waiving his rights.

And that is what the Court determined Mr. Hendricks to be doing.

Then his case proceeded to trial.

The evidence that was adduced at trial, it need not be gone into in any great detail at this point by me, except that during the course of every trial rules are made by the Court, hopefully, they are right.

But the defendant is not entitled, nor is the State entitled to a perfect trial. He is entitled to a Constitutionally fair trial, one which does not fundamentally abridge rights which are guaranteed to him under the Constitution of the United States and the laws of the State of Illinois.

When the State rested its case, the issues that the Court had to grapple with, and it was a profound issue in my mind, was whether or

not the State had proven the corpus delecti of the offenses charged in this indictment.

That didn't come as any shock to the litigants in this case, the lawyers in this case knew that that was going to be the position taken by the Defense.

And so I considered the memorandums of law supplied to me by both sides in this case. I read all of the authorities cited by both sides in this case. And I did my own independent research and thinking about this case, not from an advocate point of view; but from a point of view of trying to apply the law of this jurisdiction as I understand it to be.

It may be argued, and probably and undoubtedly will be argued, that I misapprehended or misapplied the law to the facts of this case. Be that as it may, it was my judgment without any hesitation on the murder charge, that the State had proven the corups delecti of murder outside of or aliunde of the confession of the defendant.

The other crimes charged in this indictment simply needed to be shown that the defendant's confession was corroborated

sufficiently for the Court to rely upon the confession, and used in support of the corpus delecti of those offenses.

That is the law of the State as I understand it. And that is what the Court did. And it is why the Court denied the defendant's motion for acquittal at the close of the State's case.

Now, the question of the so-called chambers hearing, and the fact that there was some reference to the deceased in this case having been seen alive long after the State was able to show that the defendant had been with her; but that was bothersome. And so I reviewed Chambers versus Mississippi, and other cases, to determine whether or not that evidence could fairly come in, because I think that under any circumstances all of us would agree that it would have been the admissibility of hearsay.

And so I allowed the Defense the maximum opportunity to disclose and to show that this was the kind of hearsay that bore some indicia of reliability that would allow it to become admissible in the trial of this case.

The Defense failed to do that for many reasons, reasons which perhaps are unknown to me, or for whatever reason, it did not show that there was any reliability that would allow the Court to admit it into evidence.

Now, you can blame the police, you can blame the Prosecutor, you can blame fate, or whatever else you choose to blame. But that will not relieve you of the burden of demonstrating reliability in this case.

And since there was no reliability to these statements, the Court properly, in my judgment, kept them out.

The most troublemsome part of the argument, to me, has to do with whether or not the Court showed bias to the Prosecution and the remarks allegedly addressed to Defense Counsel.

I am a little flattered, almost, by the first one of those, because it is the first time anybody has accused me of that since I have been on the bench, and I have, I must tell you, been accused of the converse, many times. And so it makes me know that there is equilibrium and balance left in my personality.

I can only say to you that if that occurred, that was improper conduct on my part; but I am not certain that it did occur. And, of course, I'm not going to be the final arbitrator of that.

I find it very difficult to go back and evaluate my own conduct. I suppose I will have to let somebody else do that, and that is somebody else who would be the Reviewing Court, if review of this case becomes necessary. And they may very well find me wanting in that regard.

I must say to them and to you that it was not intentional, it was not malicious, and it was not designed to disadvantage this defendant.

As to the sexual allegation of my ignoring personal attacks against Counsel, I would like for you, Miss Placek, and Mr. Lufrano, and Mr. Murphy, and Mr. Cassidy, and everyone else under the sound of my voice, to know that I am fully aware, probably more so than any of you, that gender, bias, sexism, racism, classism, are part of the American way of life, unfortunately. And it creeps into our courtroom more often than it should. And it is shameful of me, if I allowed

that to happen in my courtroom, and not address it.

And if it did happen, you have my sincere apology; but to the best of my ability -- and I readily concede that I am am fallible --that I would not permit, sit back idlly and listen to a sexist, gender-bias, racist, anti-religious argument or statement made by the defense, or the prosecution, or witness or anyone else in this courtroom that I became consciously aware of.

I would do something, and if nothing else, resign from this seat, if I found myself in a position where I had to be treated to that kind of discourse in my courtroom, without any ability or willingness or compulsion to do anything about it.

Now, I don't purport to tell you that did not happen; I simply say to you that if it happened, I was unaware of it, for whatever reason, including insensitivity to it, for I may very well have been insensitive to something I should have been insensitive to. But how that affected the results of Mr. Hendricks, I fail to know.

It was disgraceful if it happened; but it did not affect Hendricks' rights, which is the issue here -- and not the conduct of the Court, and the insensitivity of the Court; but rather whether or not Mr. Hendricks' rights have been protected in this trial.

I think they have.

The defendant's motion for new trial is denied.

MS. PLACEK: Thank you, your Honor, for your courtesy.

THE COURT: We're going to take a five minute recess, and we will proceed to the sentencing.

(Thereupon, a short recess was taken, after which the following proceedings were had:)